

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ABIGAIL ORTIZ, individually and on behalf of herself and all others similarly situated,

Case No.: 2:20-cv-00621-GMN-BNW

Plaintiff,

VS.

SHAC LLC d/b/a SAPPHIRE
GENTLEMEN'S CLUB,

Defendant.

ORDER

Pending before the Court is Defendant SHAC LLC d/b/a Sapphire Gentlemen's Club's ("Defendant's") Motion to Compel Arbitration and Stay Case, (ECF Nos. 31, 33). Plaintiff Abigail Ortiz ("Plaintiff") filed a Response, (ECF No. 37), and an Errata, (ECF No. 39). Defendant filed a Reply, (ECF No. 41).

Also pending before the Court is Defendant's Motion to Dismiss and Stay Case, (ECF Nos. 35–36). Plaintiff filed a Response, (ECF No. 40), and Defendant filed a Reply, (ECF No. 43).

For the reasons discussed below, the Court **GRANTS** the Motion to Compel Arbitration and Stay Case and **DENIES without prejudice as moot** the Motion to Dismiss and Stay Case.

I. **BACKGROUND**

This case arises from Defendant allegedly having sent automated text messages to Plaintiff and other similarly situated persons' cellphones without their prior express consent in violation of the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* ("TCPA"). (Compl. ¶¶ 1–3, 23–33, 58–67, ECF No. 1). Defendant is an adult cabaret that previously employed Plaintiff as a performer. (*See id.* ¶ 19). Plaintiff alleges that Defendant negligently, knowingly, and/or willfully transmitted unsolicited, autodialled SMS or MMS text messages, *en*

1 *masse*, to Plaintiff's cell phone and to the cell phones of numerous other individuals across the
 2 country by using an automatic telephone dialing system. (*Id.* ¶¶ 1–3, 23–33, 58–67).

3 On July 8, 2020, Defendant moved to dismiss the Complaint, arguing that Plaintiff had
 4 previously signed an arbitration agreement encompassing the claim, which deprived this Court
 5 of subject matter jurisdiction. (*See generally* First. Mot. Dismiss, ECF No. 11). The Court
 6 denied the Motion, explaining that even if the arbitration agreement encompassed Plaintiff's
 7 claim, the Court had subject matter jurisdiction over the case, and the Motion was not properly
 8 the subject of Federal Rule of Civil Procedure 12(b)(1). (*See* Order, ECF No. 30). Defendant
 9 now moves to compel arbitration and stay the case. (*See* Mot. Compel and Stay ("Mot
 10 Compel."), ECF No. 31, 33).

11 **II. LEGAL STANDARD**

12 Section 2 of the Federal Arbitration Act ("FAA") provides that:

13 A written provision in . . . a contract evidencing a transaction involving commerce
 14 to settle by arbitration a controversy thereafter arising out of such contract or
 15 transaction . . . shall be valid, irrevocable, and enforceable, save upon such
 grounds as exist at law or in equity for the revocation of any contract.

16 9 U.S.C. § 2. "In enacting § 2 of the [FAA], Congress declared a national policy favoring
 17 arbitration and withdrew the power of the states to require a judicial forum for the resolution of
 18 claims which the contracting parties agreed to resolve by arbitration." *Southland Corp. v.*
 19 *Keating*, 465 U.S. 1, 10. Courts place arbitration agreements "upon the same footing as other
 20 contracts." *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S.
 21 468, 478 (1989).

22 Under the FAA, parties to an arbitration agreement may seek a court order to compel
 23 arbitration. 9 U.S.C. § 4. The FAA "leaves no place for the exercise of discretion by a district
 24 court, but instead mandates that district courts shall direct the parties to proceed to arbitration
 25 on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds Inc. v.*

1 *Byrd*, 470 U.S. 213, 218 (1985). Generally, the Court’s “role under the [FAA] is . . . limited to
2 determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the
3 agreement encompasses the dispute at issue.” *Lee v. Intelius, Inc.*, 737 F.3d 1254, 1261 (9th
4 Cir. 2013). If a district court decides that an arbitration agreement is valid and enforceable,
5 then it should either stay or dismiss the claims subject to arbitration. *Nagrampa v. MailCoups,*
6 *Inc.*, 469 F.3d 1257, 1276–77 (9th Cir. 2006).

7 **III. DISCUSSION**

8 Defendant argues that the Court is bound to compel arbitration of the instant dispute.
9 (Mot. Compel 5:20–23, ECF No. 31). It contends that the arbitration agreement encompasses
10 all disputes between the parties, and the agreement expressly survives the termination of the
11 employment relationship between the parties. (*Id.* 4:1–8); (*see also* Independent Contractor and
12 Lease Agreement § 11(A), (F), (H), Ex. A to Mot. Compel, ECF No. 31-1). Defendant also
13 notes that the Arbitration Agreement expressly delegates issues of arbitrability to the arbitrator,
14 so any issues of the Arbitration Agreement’s validity or enforceability are not for the Court to
15 decide. (*Id.* 4:27–5:19); (*see also* Independent Contractor and lease Agreement § 11(D)).

16 Plaintiff’s arguments concern the arbitrability of this dispute, but not the threshold
17 question of who may decide issues of arbitrability. Plaintiff contends that this dispute arises
18 outside the scope of the Agreement because the Agreement covers Plaintiff’s employment with
19 Defendant, but not her receipt of automated text messages from Defendant. (Resp. Mot.
20 Compel 3:16–4:2, ECF No. 37-1). Plaintiff also argues that the Arbitration Agreement is no
21 longer in effect because she previously terminated the contract containing the agreement. (*Id.*
22 4:3–8, 5:9–8); (*see also* Ortiz Decl. ¶¶ 3, 6, Ex. 1 to Resp. Mot. Compel, ECF No. 37-1). Even
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1 if the agreement remains in effect on its own terms, she argues that the agreement is invalid.
 2 (*Id.* 7:3–8:16).¹

3 While arbitration provisions are typically enforceable, Courts may invalidate them
 4 through “generally applicable contract defenses, such as fraud, duress, or unconscionability.”
 5 *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). However, where the arbitration
 6 agreement contains a “delegation clause,” threshold questions of arbitrability generally decided
 7 by courts become the province of the arbitrator. *See Brennan v. Opus Bank*, 796 F.3d 1125,
 8 1130 (9th Cir. 2015) (“gateway issues can be expressly delegated to the arbitrator where ‘the
 9 parties clearly and unmistakably provide . . .’”). In *Rent-A-Center, West, Inc. v. Jackson*, the
 10 Supreme Court considered “whether, under the Federal Arbitration Act . . . a district court may
 11 decide a claim that an arbitration agreement is unconscionable, where the agreement explicitly
 12 assigns that decision to the arbitrator.” 561 U.S. 63, 65 (2010). The Supreme Court held that,
 13 unless such a delegation clause itself is challenged, the Court should defer resolution of
 14 gateway arbitrability questions to the arbitrator. *See id.* at 70 (“An agreement to arbitrate a
 15 gateway issue is simply an additional antecedent agreement that the party seeking arbitration
 16 asks the court to enforce, and the FAA operates on this additional arbitration agreement just as
 17 it does on any other.”).

18 Plaintiff’s Response concerns the arbitrability of the present dispute, but not the proper
 19 tribunal to adjudicate issues of arbitrability. While the Court is not assured of the Arbitration
 20 Agreement’s validity or whether the Agreement temporally remains in effect, those are not
 21 issues for the Court to decide. The parties’ Arbitration Agreement expressly delegates issues of
 22 arbitrability for the arbitrator. (Independent Contractor and Lease Agreement § 11(D)) (“The
 23 arbitrator shall have exclusive authority to resolve any and all disputes over the validity of any

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25 ¹ Plaintiff also argues that she may revoke any consent she gave to receive text messages under the TCPA, but
 the argument goes to the viability of Plaintiff’s cause of action, not whether she is bound to litigate the dispute in
 arbitration. (*See* Resp. Mot. Compel 4:9–17, 6:9–7:2).

1 part of this lease, including the arbitrability of any issue”). Determining whether the
2 present dispute arises out of the parties’ Agreement or if the Agreement remains in effect are
3 issues of arbitrability. *See Nolde Bros v. Bakery & Confectionery Workers Union*, 430 U.S.
4 243, 255 (1977) (noting, despite cessation of the employer-employee relationship, that the
5 employment contract’s delegation clause reserved determination of the contract’s validity for
6 the arbitrator); *Momot v. Mastro*, 652 F.3d 982 (9th Cir. 2011) (reversing district court’s
7 determination that the claims were not subject to arbitration when the parties’ agreement
8 contained a delegation clause reserving issues of arbitrability for the arbitrator). While Plaintiff
9 has previewed her defenses to the Arbitration Agreement’s enforcement, she has not explained
10 why the defenses are for the Court to decide rather than the arbitrator. Nor has she raised
11 specific defenses to the validity of the delegation clause. Accordingly, the Court grants
12 Defendant’s Motion to Compel.

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1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendant's Motion to Compel Arbitration, (ECF No.
3 31), is **GRANTED**.

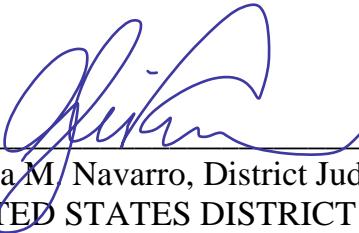
4 **IT IS FURTHER ORDERED** that Defendant's Motion to Stay Case, (ECF No. 33), is
5 **GRANTED**. The case shall be stayed pending arbitration.

6 **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss, (ECF No. 35), is
7 **DENIED without prejudice as moot**.

8 **IT IS FURTHER ORDERED** that Defendant's Motion to Stay Case, (ECF No. 36), is
9 **DENIED without prejudice as moot**.

10 **IT IS FURTHER ORDERED** that every ninety (90) days, beginning September 10,
11 2021, the parties shall submit a joint status report regarding the status of arbitration.

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13 Dated this 11 day of June, 2021.

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18 Gloria M. Navarro, District Judge
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UNITED STATES DISTRICT COURT